

**Exhibit A**

**Administrative Record**

**§n(2)**

**City of San Leandro  
Community Development Department  
Planning Services Division  
Staff Report**

**DATE:** April 12, 2007

**TO:** Planning Commission

**FROM:** Debbie Pollart, Planning Manager

**SUBJECT:** **PLN2006-00049;** Rezone and Zoning Map Amendment to rezone the properties identified as 14600 and 14850 Catalina Street from Industrial Park (IP) to Industrial Park, Assembly Use Overlay (IP-AU). No physical changes to the properties are proposed as part of this entitlement. The project site is located at the southeast corner of Catalina Street and Farallon Drive and is comprised of three separate parcels; Assessor's Parcel Numbers 80G-933-20, 21, and 22-1; International Church Foursquare Gospel (property owner and applicant).

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**SUMMARY AND RECOMMENDATION**

The applicant of the properties at the corner of Catalina Street and Farallon Drive purchased the property in January 2007 and wishes to locate an Assembly use on the property. Currently, Assembly uses are only conditionally permitted in R districts. On March 19, 2007 the City Council approved Zoning Code and Map amendments establishing an Assembly Use Overlay, with 196 properties (in commercial and industrial zones) identified for rezoning with an Assembly Use Overlay. The Assembly Use Overlay allows Assembly uses with approval of a conditional use permit. The Zoning Code and Map amendments will be effective May 1<sup>st</sup>. The project site in question was not identified for the Assembly Use overlay designation, so the applicant is requesting that their property be considered for rezoning with the Assembly Use Overlay.

Based upon the General Plan policies and Zoning Code regulations that were the basis for the Assembly Use Overlay criteria, and also based on the potential public health and safety hazard to human populations on-site, staff recommends that the Planning Commission deny the application for a rezone of the properties with the Assembly Use Overlay. Staff notes that an action of denial by the Planning Commission is final (does not require concurrence by the City Council), and that the denial may be appealed to the City Council. Staff notes that an action of denial by the Planning Commission is final (does not require concurrence by the City Council), and that the denial may be appealed to the City Council.

## **APPLICANT'S SUPPORTING STATEMENT**

See attached.

## **BACKGROUND**

Faith Fellowship Church (FFC) recently purchased the property at 14600 Catalina (formerly occupied by MDL). On May 18, 2006, staff received an application from FFC requesting a Zoning Code amendment to conditionally permit Assembly uses in Industrial Limited (IL) zones, and to rezone their property from Industrial Professional (IP) to IL (thus setting up the possibility for review of a use permit for an assembly use at the 14600 Catalina site).

Currently, the Zoning Code conditionally permits Religious Assembly uses in R districts, and Faith Fellowship's current location at 577 Manor is zoned RS (PD), Residential Single-Family, Planned Development Overlay District.

A joint worksession with the Board of Zoning Adjustments and Planning Commission was held on October 19. Based upon policy and criteria set forth in the General Plan, staff presented two options for consideration: 1) Amend the Zoning Code to allow Assembly Uses as conditionally permitted in the IL zone; and 2) Apply an Assembly Use Overlay to identified areas. The direction given by the Board and Commission was for staff to move forward with consideration of Option 2. Subsequent to the joint work session, this option was presented to several advisory committees, including the West San Leandro/MacArthur Boulevard Redevelopment Area Advisory Committee, the Chamber of Commerce Government Affairs Committee, and the Joint Redevelopment Area Advisory Committee. At the December 7, 2006 Board of Zoning Adjustments meeting, the refined proposal for an Assembly Use Overlay was presented to the Board for comment. On February 22, 2007 the Planning Commission recommended approval of the proposed Zoning Code and Map amendments. On March 19, the City Council approved Zoning Code and Map amendments related to formation of an Assembly Use Overlay, and rezoned 196 properties (in commercial and industrial districts) that met the Overlay criteria with the Assembly Use (-AU) overlay. These changes will become effective May 1.

At the time of the February Planning Commission meeting, staff recommended to the applicant that once the Zoning Code and Map amendments were approved by Council, that they revise their application, to ask to be included in the newly created Assembly Use Overlay.

## **STAFF ANALYSIS**

### Assembly Use Overlay

In evaluating the policy issue of expanding the locations where assembly uses could locate in the City, staff notes that analyzing this matter raises larger General Plan policy issues. Staff looked at the following overriding General Plan Policies for guidance:

- ▶ "The areas most suitable for conversion to non-industrial uses are those located adjacent to existing housing, or in areas which lack the amenities to meet the needs of modern



industry. Such areas exist along San Leandro Boulevard, Alvarado Street, and Marina Boulevard” (Page 3-52 of the General Plan);

- ▶ General Plan Policy 10.04 *Industrial Sanctuary* – Protect the City’s major industrial areas from encroachment by uses that are potentially incompatible with existing viable industrial activities, or which may inhibit the ability of industry to operate effectively; and
- ▶ General Plan Policy 33.04 *Separation from Sensitive Uses* – Provide adequate and safe separation between areas where hazardous materials are present and sensitive uses such as schools, residences and public facilities.

The following General Plan policies were also considered:

- ▶ Policy 7.09 – Build upon the locational strengths and transportation features of West San Leandro to support the area’s continued development as a major industrial, technology, and office employment center. In accordance with the West San Leandro Plan, limit the encroachment of incompatible residential and retail uses into the area, and promote additional development and redevelopment with manufacturing, technology, warehouse and distribution, office/flex, and similar uses.
- ▶ Policy 7.10 – Facilitate the gradual transition of the South-of-Marina (SOMAR) area into a cohesive light industrial district characterized by light manufacturing, office/flex, research and development, bio-medical, e-commerce, and similar uses, along with complementary business services and employee amenities.
- ▶ Policy 13.01 – Ensure that future land use development decisions are in balance with the capacity of the City’s transportation system.

In addition, Article 1 of the Zoning Code stipulates that the broad purpose of the Zoning Code is to protect and promote the public health, safety, and general welfare, and to implement the policies of the City of San Leandro General Plan. More specifically, the Zoning Code is intended to:

- ▶ Provide a precise guide for the physical development of the City in accord with the policies of the General Plan;
- ▶ Preserve the character and quality of residential neighborhoods and commercial and industrial areas consistent with the character of the development districts of the City;
- ▶ Promote the economic stability of existing land uses that are consistent with the development policies of the General Plan and protect them from intrusions by inharmonious or harmful land uses;

Article 7 – Industrial District indicates the following specific purposes:

- ▶ Provide appropriately located areas consistent with the General Plan for a broad range of manufacturing, distribution and storage, and service areas;
- ▶ Strengthen the City's economic base, and provide employment opportunities close to home for residents of the City and surrounding communities;
- ▶ Provide a suitable environment for various types of industrial uses, and protect them from the adverse impacts of inharmonious uses;

Based on General Plan policies such as those noted above, area specific policies and plans, and Zoning Code purposes, the following criteria were developed for evaluating appropriate locations for assembly uses, with the express objective of expanding the opportunities for assembly uses beyond the residential zoning districts:

- *Site is not located along a major commercial corridor* (identified as E. 14<sup>th</sup> Street and Marina Boulevard between San Leandro Boulevard and Merced Street);
- *Site is not located within the following General Plan Focus Areas: Downtown, Bayfair, Marina Blvd/SOMAR, or West San Leandro* (each of these Focus Areas is governed by one or more of the following, which governs future development – special study/guidelines, special overlay district, or location within a redevelopment area);
- *Site is not located in a regional-serving retail area* (identified as Greenhouse Marketplace, Westgate, Marina Square, and 'old' Target site);
- *Site is not located inside the ½-mile study area identified for the Downtown Transit-Oriented Development (TOD) Strategy;*
- *Site abuts or is within ¼ mile of an arterial street* (as identified in the Circulation Element of the General Plan);
- *Site is not located in a Residential Zone* (Assembly uses are already conditionally permitted in residential zones, so would not produce new areas for assembly uses to locate if considered);
- *Site is not considered public land, and is not zoned Public Service (PS), Open Space (OS), or Commercial Recreation (CR); property is not owned by an Exempt Public Agency, or leased/owned by a public utility* (these areas represent properties and uses that are unlikely to change);
- *Overlay Area must allow a contiguous area greater than or equal to two acres.* (This figure was derived from research indicating that large assembly uses require a minimum 2-acre site to accommodate bigger building size and to allow for adequate on-site parking.)



After inputting General Plan policy and Zoning Code criteria, several potential overlay areas, located throughout the City, were derived where staff recommended assembly uses could be conditionally permitted. This was accomplished via a Zoning Code text amendment to define the Assembly Use Overlay and then a Zoning Map amendment designating all of the applicable areas with the new Assembly Use Overlay, both of which were approved by the City Council on March 19 and become effective May 1. A total of 196 properties, encompassing approximately 221.1 acres, will be rezoned with the Assembly Use overlay.

The General Plan and the goals and policies contained within it provide a framework for the City's Zoning Code. The General Plan is a legal document and land use decisions, including rezones, must be consistent with the Plan. Staff believes that rezoning the subject site with the Assembly Use Overlay would not be consistent with several policies contained in the General Plan.

The properties to be rezoned with the Assembly Use Overlay met all of the General Plan and Zoning Code criteria indicated above. The project site in question does not meet two of the criteria: 1) the property is located within one of the identified General Plan Focus Areas; and 2) the property does not abut or is not located within ¼ mile of an arterial. During the analysis of the criteria, staff initially looked at sites in terms of how many of the criteria were met, but soon came to the conclusion that there was no logical or non-arbitrary way to determine, for example, that a site that met four out of eight of the criteria wouldn't make the overlay list, but a site that met five out of eight criteria did make the list. It should also be noted that when the data was put into the computer to be analyzed, there was no direction given that certain sites should or should not be indicated for the overlay. The inclusion/exclusion in the overlay is based solely on the criteria data indicated above.

#### Public Health & Safety

The subject site and properties to the immediate west and south are zoned Industrial Park (IP). Zoning for properties immediately to the east and north are zoned Industrial General (IG), with Industrial Limited (IL) zoning located further to the west and north. Article 7 of the Zoning Code indicates that IL properties are typically low- to moderate-intensity industrial uses capable of being located adjacent to residential areas, and can include commercial services and light manufacturing. Properties zoned IP are intended for development of high technology, R&D, and limited industrial activities within a landscaped setting. Small warehousing and distribution, industrial office centers, and certain types of specified retail uses can be found in IP zones. The IG zone is the broadest industrial zone within the city, and is intended for the 'heaviest' industrial uses, including the production of goods, manufacturing of products from raw materials, bulk storage, chemical manufacturing or processing, laundry/dry cleaning plants, auto dismantling, oil/gas refining, manufacture of stonework/concrete products, and power generation. IG zoning also accommodates those businesses requiring rail traffic.

Based upon information provided by the City's Environmental Services Division, within 500 feet of the property site there are eight businesses which operate under Hazardous Materials Business Plans (HMBPs). Hazard classifications for these eight businesses include: combustible liquid, flammable liquid, oxidizer, corrosive, and miscellaneous hazardous material. The quantity of



classified hazardous materials ranges from less than 500 pounds/55 gallons/2,200 cubic feet (Range 1), up to 5,000 pounds/550 gallons/22,000 cubic feet (Range 3). One of these businesses is also classified as a 'small quantity generator', indicating that more than 27 gallons or 220 pounds, but less than 270 gallons or 2,200 pounds of hazardous waste per month is generated.

Moving out from the site to a quarter mile, there are an additional 13 businesses with active HMBPs. Hazard classifications for these 13 additional businesses include: flammable gas, corrosive, flammable liquid, combustible liquid, non-flammable gas, oxidizer, and miscellaneous hazardous material. The quantity of classified hazardous materials for these businesses ranges from less than 500 pounds/55 gallons/2,200 cubic feet (Range 1), up to greater than or equal to 500,000 pounds/55,000 gallons, or 2,000,000 cubic feet (Range 5). Three of these businesses are considered federal facilities (Range 3 or higher), which require yearly reporting due to the quantities of materials on-site.

The City's industrial zones are designed to and do in fact accommodate materials and activities that pose at least a potential hazard to human populations. The presence, and the potential future presence, of hazardous materials and activities in the vicinity of the project site and the intended assembly use, renders it inappropriate for rezoning with the Assembly Use Overlay.

## ENVIRONMENTAL REVIEW

In anticipation of the applicant's desire to revise their application to have their property rezoned with the Assembly Use Overlay, staff included the Catalina Street properties in the Negative Declaration that was prepared for the Assembly Use Overlay. This document had the required 20-day public review period (February 1-20) and was adopted by the City Council on March 19. No further environmental review is required.

## PUBLIC OUTREACH

Legal requirements for notification of this meeting included posting of the meeting agenda at City Hall a minimum of 72 hours in advance of the meeting date. In addition, a legal ad was placed in the Daily Review and notices for the hearing were sent to all businesses and property owners within a 300-foot radius of the project site. Notices were posted on the property and on telephone poles or light poles within the 300-foot radius. In addition, courtesy notices were sent to the following homeowners associations: Marina Faire, Marina Gardens, Marina Seagate, Marina Vista, Bonaire, and Washington/Manor. As of the writing of this staff report, one phone call had been received by staff, from a nearby homeowner, who was not in favor of the rezone. She cited concerns over increased traffic and over-flow parking into the neighborhood, associated with the assembly use.

## RECOMMENDATION

Based upon the General Plan policies and Zoning Code regulations that were the basis for the Assembly Use Overlay criteria, and also based on the potential public health and safety hazard to human populations on-site, staff recommends that the Planning Commission deny the application for a rezone of the properties with the Assembly Use Overlay. Staff notes that an action of denial

by the Planning Commission is final (does not require concurrence by the City Council), and that the denial may be appealed to the City Council.

Staff believes that denial of the requested rezone for the property does not place a substantial burden on the religious exercise of the applicant, in that the applicant's existing site remains available for assembly uses. Further, with the recent changes to the Zoning Code to establish an Assembly Use Overlay district, 196 additional properties within the City will now be available for consideration of a conditional use permit for assembly uses. The creation of the Assembly Use Overlay creates added opportunities for assembly uses to locate, over what is currently permitted. In addition, staff believes that denial of the rezone would advance the City's compelling interest two-fold: in safeguarding the congregants from exposure to potentially adverse health and safety impacts of surrounding industrial uses; and maintaining adherence to the policies provided in the General Plan, which provided the basis for development of the Assembly Use overlay criteria.

In recommending this denial, staff believes that there is no less restrictive means (i.e. no means short of outright denial of the rezone) that would further the City's interest in safeguarding the health and safety of the future congregants and the City's interests that led to formation of the Assembly Use overlay. In support of this conclusion, it is anticipated that any future conditions of approval that would be placed on a conditional use permit issued for the proposed assembly use (last entitlement required if rezone is approved), would not effectively ensure the health and safety of the congregants. For the formation of the Assembly Use overlay, the City cannot, by some less restrictive alternative to denial, change the facts that make the property inconsistent with the criteria formulated for establishment of the Assembly Use overlay designation.

If the Planning Commission can make findings for approval of the rezone, staff recommends that the item be continued to the next scheduled Planning Commission meeting, to allow staff time to prepare findings for approval.

## ATTACHMENTS

Vicinity Map  
Applicant's Supporting Statement  
Recommended Findings for Denial  
Correspondence